

ORIGINAL

Before The
Federal Communications Commission
Washington D.C. 20554

JUL 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 74 of)
the Commission's Rules)
Governing Use of the Frequencies)
in the Instructional)
Television Fixed Service)

MM Docket No. 93-106

To: The Commission

REPLY COMMENTS

Hispanic Information and Telecommunications Network, Inc., ("HITN"), by its counsel, hereby submits its Reply Comments with respect to the above-referenced proceeding.¹ The Notice of Proposed Rulemaking in this proceeding solicited comment on minimum ITFS programming requirements. Specifically, the NPRM asked for comments regarding the desirability of ITFS licensees to "channel load" their minimum required programming onto one channel, while relaxing the established minimum programming requirements for each channel. HITN submits its Reply Comments with respect to those comments filed by 29 interested parties in this proceeding on or before June 14, 1993. HITN will address these comments which it feels reflects its own positions regarding the critical issues in this proceeding, particularly with respect to channel loading and this proposal's relationship

¹ Reply Comments were due to be filed by July 29, 1993. See *Notice of Proposed Rulemaking*, 8 FCC Rcd 2828 (1993). Consequently, the HITN Reply Comments are timely filed.

to the current requirements of §74.902(d) of the Commission's rules, the four-channel rule. In support whereof, the following is submitted.

Commentors Split on the Merits of Commission Proposal

The 29 commentors in this proceeding, fairly evenly split in terms of sheer numbers between educators and commercial operators, were starkly divided with respect to their support of the Commission's proposal to allow ITFS licensees to channel load their programming. Virtually every educator opposed the proposal, while, not surprisingly, every wireless cable operator and related group supported the channel loading proposal.² The educators generally feel that channel loading is a *de facto* reallocation of three ITFS channels to commercial operators, and that the implementation of the channel loading proposal would mean that, in the words of one commentor, such ITFS channels would never be returned to educational use.³ The commercial operators see the channel loading as a method cut down on the expenses currently incurred in channel mapping, thus improving the technical performance of wireless systems, which will redound to the economic benefit of the ITFS licensees leasing channels to the operators.

² The "fiction" created by channel mapping apparently is fact to most educators filing comments in this proceeding.

³ See the Comments of the Catholic Television Network filed on June 14, 1993 in this proceeding. The Catholic Television Network was one of several commentors who strongly opposed the Commission's proposal to allow channel loading.

HITN believes that the Commission should not adopt new channel loading rules without implementing safeguards such as those proposed by many commentators in this proceeding. For instance, the Comments of Cross Country and the Box Spring educators proposes that each applicant or licensee who proposes to use channel loading should provide the Commission with adequate justification for the need to use the channels in this manner.⁴ HITN supports this proposal as a minimum requirement for the use of channel loading.

Channel Loading and §74.902(d)

In the NPRM the Commission asked for comments with respect to §74.902(d) and its relationship to any modification of §74.931 governing minimum instructional use of the ITFS channels, and

⁴ HITN supports this proposal for several reasons, not the least of which is that it would necessarily involve some showing of need for the use of the ITFS channel in the first place, before the need for channel loading was demonstrated.

the demonstration of need required in §74.902.⁵ Only a handful of commentors addressed this issue, none of them satisfactorily to HITN's point of view. HITN believes that §74.902(d), the so-called four-channel rule, is a critical regulation in the development of the ITFS service.⁶ HITN understands that the relaxation of the minimum programming requirements called for by channel loading will cause a logical inconsistency between the aforementioned rules. This may result in the relaxation of the interpretation of the need showing embodied in §74.902. However, under no circumstances must the Commission permit the strictures of §74.902(d) to be loosened at this crucial juncture

⁵ Section 74.902(d) states in part that:
"Applicants shall not apply for more channels than they are intending to construct within a reasonable amount of time, simply for the purpose of reserving additional channels. The number of channels authorized to an applicant will be based on a demonstration of need for the number of channels requested. The Commission will take into consideration such factors as the amount of use of any currently assigned channels and the amount of proposed use of each channel requested, the amount of, and the justification for, any repetition in the schedules, and the overall demand and availability of ITFS channels in the community."

⁶ 47 C.F.R Section 74.902(d) precludes the assignment of more than four ITFS channels to the same licensee for use within the same area of operation. Section 74.902(d) defines an area of operation as "the area in which the use of channels by one licensee precludes their use by other licensees".

in the history of the ITFS service.⁷

HITN vehemently opposes the proposal by the Rural Wireless Cable Group that the Commission should revise §74.902(d) to reflect that the showing of need is presumptively provided when an ITFS applicant proposes to lease excess capacity to a wireless cable operator. This presumption would effectively eviscerate the four-channel rule. The elimination of the four-channel rule, which has withstood the challenge of revision for more than thirty years, would devastate the ITFS service. The four-channel rule has prevented the wholesale licensing and warehousing of channels by commercial operators, and permitted numerous educators to participate in the development of the ITFS and wireless cable industries, which participation might have otherwise been barred without the four-channel rule. No

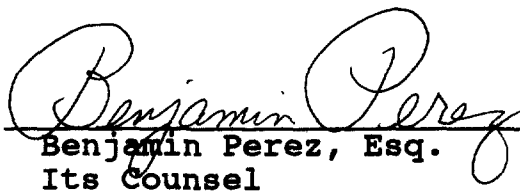
⁷ ITFS applicants and licensees seeking more than one channel group must submit a showing in support of a request for waiver of the rule. The waiver burden is exceedingly high, particularly in areas where a large demand for channels exists. The overwhelming importance placed on this rule by the Commission, and the firm Commission policy that all ITFS applicants and licensees must comply with this rule, is evidenced by the fact that the rule, which was originally promulgated by the Commission in 1963, has been considered and left unchanged no less than four times since the Commission amended its rules to permit, inter alia, the leasing of excess capacity of ITFS channels to commercial operators. See Instructional Television Fixed Service, 39 FCC 846 (1963) at para. 23, and Appendix Section 74.902(c) (Section 74.902(c) is the predecessor to Section 74.902(d)). See also Instructional Television Fixed Service, 56 RR 2d 963, 968 (1984); Instructional Television Fixed Service, 57 RR 2d 1166 (1985); Second Report and Order, 101 FCC 2d 50,77 (1985); and Memorandum Opinion and Order, 59 RR 2d 1355, 1376 (1986).

presumptions need be adopted by the Commission when it comes to the requirements of ITFS programming.

WHEREFORE, the foregoing premises considered, HITN respectfully requests that Commission incorporate the comments of HITN into any new regulations formulated with respect to the proposed amendment of the Commission's rules governing minimum programming requirements.

Respectfully Submitted,

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